REMARKS

I. <u>Summary</u>

Applicant thanks Examiner Pillai for the thorough examination of the application. The Office Action mailed June 11, 2010 ("Office Action") sets forth the following:

- Claims 41-65 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application. 2003/0004853 ("Ram") and U.S. Patent Application 2003/0189670 ("Kennedy");

No claims were amended and no new matter was added. Applicant respectfully submits that the application is in a condition for allowance for at least the following:

II. <u>Rejection Under 35 U.S.C. § 103</u>

In the claims, an association between a cursor and a price level is established in response to a cursor being placed over a location corresponding to the price level on a screen. The screen is updated such that the location on the screen where the cursor was placed does not correspond to the price level and the association is maintained. An order message is subsequently sent to the electronic exchange at that price level, even though the screen changed.

The Office Action at p. 3 correctly acknowledges that Ram does not maintain an association between a cursor and a price level corresponding to a location over which the cursor is placed subsequent to a trading screen being updated such that the location no longer corresponds to the price level. Instead, the Office Action refers to Kennedy as disclosing these features.

Kennedy relates specifically to cursor positioning in a video broadcast. (par. [0003]). In Kennedy, a camera captures footage and produces video which is sent to a processor where images are inserted in the video and which may position a cursor against the video background. (par. 0030]). The modified video is broadcast and received by a user who may user a user-driven cursor to interact with the video. (par. [0030]). The cursor position is calculated, the position of the background is calculated, a change in the position of the background between timeframes is calculated, and the cursor position is adjusted according to the calculated change of the background. (par. [0009]). Calculating the changes of the video background is performed by sensors that capture the movement of the camera to deduce the changes of the background and/or

through logging a coordinate position of an object in the display between frames to calculate coordinate changes of the position. (pars. [0036]-[0037]; [0039]-[0041]. Kennedy modifies the position of the cursor to reflect the movement of the video background by "automatically chang[ing] the position of a cursor on a display in accordance with movement of the object in the display." (pars. [[024] and [0035]). The cursor is changed by adding the coordinate change of the position to the coordinate of the cursor.

Kennedy does not disclose or suggest establishing an association between a cursor and a first price level corresponding to a location of a trading screen over which the cursor is placed and maintaining that association subsequent to the trading screen being updated such that the location no longer corresponds to the first price level as included in the claims. Indeed, Kennedy does not establish an association between a cursor and a price level, or anything in the background corresponding to a location over which a cursor is located. Kennedy is concerned with the position and changes of the position of the cursor on a display. To do so, Kennedy refers both the display and the cursor to a coordinate system. A reference position of the background is given a reference coordinates on the coordinate system, and movement of the reference position is determined according to changes in the reference coordinates. The cursor is also moved based on its reference to the same coordinate system and on those changes. There is never any association established between the cursor and the background. Instead, the background is referenced to the coordinate system, and the cursor is referenced to the coordinate system. The cursor movement is free from and independent of the background information.

Moreover, Kennedy does not maintain an association between the cursor and the price level as included in the claims. First, as described, Kennedy does not establish the relationship as included in the claim, and therefore, cannot maintain the relationship. Second, to the extent that Kennedy establishes any relationship, Kennedy discloses that even that relationship is not maintained. More particularly, because of how Kennedy moves the cursor, the position of the cursor may not be located in the display, or outside the range of possible values of the display. (par. [0043]). In this event, the cursor is placed at a default coordinate of the coordinate system, divorced from the original location. (par. [0043]). Thus, Kennedy does not maintain any relationship as included in the claims. As such, features of the claims are entirely missing from the cited art, and therefore the cited art does not disclose or suggest the features of the claims.

Applicant also respectfully submits that the combination of Ram and Kennedy for a finding of obviousness is improper. In particular, the Federal Circuit Court of Appeals has held that it is improper to combine references for a finding of obviousness where the cited art is not part of the field of the invention. *Anderson Corp. v. Pella Corp.*, 300 Fed. Appx. 893 (Fed. Cir. 2008). In that case, the Court held that a screen mesh was not part of the field of invention for an insect screen because 1) the screen mesh was more expensive than the insect screening, and 2) the screen mesh was held not out by the manufacturer for insect screening. *Anderson Corp.*, 300 Fed. Appx. 897. The Court conceded that common sense and the nature of the problem to be solved could lead an insect screen designer to a mesh primarily used outside insect screening. However, the Court held that the difference between the insect screen problems and a solution provided by the use of the screen mesh were sufficiently different to "discourage an insect screen designer from using the more expensive mesh." *Anderson Corp.*, 300 Fed. Appx. 897-98. Even though the cited art and the claimed invention were both related to screens/mesh, the Court held that use of the screen mesh cited art was improper because the screen mesh was outside the field of invention for the insect screen. Accordingly, although the screen mesh prior art may have been suitable for insect screening -- both block insects --, the Court held that it is improper to use the screen mesh because it is not in the field of invention for the insect screening.

Similarly, Kennedy is clearly outside the field of invention for the claimed subject matter for sending trade orders to buy or sell a tradeable object at an electronic exchange as included in the claims. As discussed, Kennedy relates to relates to positioning a cursor and specifically to cursor positioning in a video broadcast. (par. [0003]). Kennedy calculates changes of the video background with sensors that capture the movement of the camera to deduce the changes of the background and/or through logging a coordinate position of an object in the display. (pars. [0036]-[0037]; [0039]-[0041].

There is no disclosure in Kennedy for a trading screen, a price level on a trading screen, or even placing a cursor relative to a first price level on a trading screen. Moreover, there is no disclosure in Kennedy for trade orders, an order message, an electronic exchange, or sending an order message. Indeed, there is no disclosure in Kennedy that the background is anything other than a video a broadcast. One skilled in the art would understand that Kennedy's solution for "for positioning a cursor on a moving object in a video broadcast" is outside the scope for the

present invention. That is, similar to an expensive screen mesh being outside the field of invention for insect screening as in *Anderson*, a cursor placement in a video background is clearly outside of the field of invention of the claims.

The differences between the cursor placement on a video broadcast and sending trade orders as included in the claims are sufficiently different so as to discourage the use of the cursor placement for placing orders in an electronic trading environment as in the claims. Kennedy does not relate to an electronic trading environment, and the present claims do not relate to the video broadcasts, or maintaining cursors with respect to a video broadcast. Common sense and the nature of the problem solved by the present invention would not have led one skilled in the art of the present claims to Kennedy because Kennedy is significantly different. Indeed, nothing in Kennedy discloses or suggests that Kennedy may be used outside the specified solutions therein or even for electronic trading. Therefore, according to the Federal Circuit, the rejection of the claims based on Kennedy is improper.

As such, Applicant respectfully submits that the claims would not be obvious over the cited art. Applicant also respectfully submits that the combination of the cited art for the finding of obviousness is improper. Withdrawal of the rejection is respectfully requested.

III.   Conclusion

All the stated grounds of objection and rejection have been respectfully traversed. Applicant respectfully submits that the present application is in condition for allowance. If the Examiner believes that further dialog would expedite consideration of the application, the Examiner is invited to contact Trading Technologies in-house Patent Counsel Joseph Flerlage at 312-698-6065.

Respectfully submitted,

Date: August 9, 2010   By: /Thomas J. Loos/
                                                Thomas J. Loos
                                                Reg. No. 60,161